

DECISION DOCUMENT

PREAUTHORIZATION OF A CERCLA §111(a) CLAIM

Re-Solve, Inc. Site - North Dartmouth, Massachusetts

STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan ("NCP"). Section 112 of CERCLA directs the President to establish the forms and procedures for filing claims against the Hazardous Substances Superfund (the Superfund or the Fund). Executive Order 12580 delegates to the Administrator of the Environmental Protection Agency ("EPA") the responsibility for such claims. Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to section 122(b) of CERCLA. The Director, Office of Emergency and Remedial Response ("Director, OERR") is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redlegation R-14-9 "Claims Asserted Against the Fund," May 25, 1988).

BACKGROUND ON THE SITE

On September 24, 1987, Michael R. Deland, EPA Regional Administrator for Region I, signed the Record of Decision ("ROD") for the Re-Solve, Inc. Site (hereinafter referred to as the "Site"). The ROD describes a comprehensive approach for site remediation which includes both a source control component and a management of migration component. In summary, the remedy provides for the excavation of PCB contaminated soils located in the unsaturated zone; excavation of PCB contaminated sediments located in wetland resource areas; treatment of contaminated soils and sediments on-site in a dechlorination facility; active restoration of the aquifers contaminated with volatile organic compounds (VOCs) using on-site treatment through air stripping and carbon adsorption over a ten year period; and implementation of institutional controls following the remedial action due to the continued presence of PCBs in the saturated zone soil matrix on-site.

In June 1987, EPA provided members of the public, including the group of potentially responsible parties ("PRPs"), with an opportunity to comment on the remedial investigation and feasibility study ("RI/FS") of the Site and the preferred alternative for cleanup prior to the selection of the remedy. On March 15, 1988, EPA, pursuant to section 122 of CERCLA, issued special notice letters to the PRPs. On July 22, 1988, EPA and the Steering Committee representing the PRPs reached agreement in

principle. The agreement provided that the Settling Defendants, as defined in the Consent Decree, would carry out the remedy selected by EPA, and that EPA would reimburse the Settling Defendants for a portion of the costs of implementing the remedy.

On September 28, 1988, the Settling Defendants submitted a formal Request for Preauthorization as required by section 300.25(d) of the National Contingency Plan (NCP) (40 CFR Part 300).

A consent decree between EPA, the Commonwealth of Massachusetts and the Settling Defendants and the De Minimis Settling Defendants is being executed simultaneously with this Decision Document. The Scope of Work, which is appended to the Consent Decree, will be used to implement the remedy selected in the ROD and summarized above.

FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment that if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary, reimbursement, subject to any maximum amount of money set forth in the preauthorization decision document, will be had from the Superfund. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined based on its evaluation of relevant documents and the Settling Defendants' Request for Preauthorization, pursuant to section 300.25(d) of the NCP, that:

- (1) A release or potential release of hazardous substances warranting a response under section 300.68 of the NCP exists at the Re-Solve Site;
- (2) The Settling Defendants have agreed to implement the cost-effective remedy selected by EPA to address the threat posed by the release at the Site;
- (3) The Settling Defendants have demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;
- (4) The activities proposed by the Settling Defendants, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and
- (5) The Settling Defendants have demonstrated evidence of State cooperation.

In summary, while EPA does not accept as fact all of the statements contained in the Settling Defendants' Request for Preauthorization, the Request demonstrates a knowledge of relevant

principles. The agreement provided that the Settling Defendants would carry out the remedy as required by the Consent Decree, and that EPA would reimburse the Settling Defendants for a portion of the costs of implementing the remedy.

On September 18, 1988, the Settling Defendants submitted a formal request for reimbursement as required by Section 300.52(d) of the Federal Contingency Plan (NCP) (45 CFR 300).

A contract dispute between EPA, the Commonwealth of Massachusetts and the Settling Defendants and the Minimal Settling Defendants was being actively litigated with this Decision Document. The type of work, which is appended to the Consent Decree, will be implemented the remedy selected for the Site and summarized below.

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The authorization is, EPA's prior approval to submit a request for reimbursement for reasonable and necessary response costs incurred as a result of carrying out the NCP response actions. The request is submitted to the response action is conducted in accordance with the authorization and costs are reasonable and necessary, reimbursement, subject to any maximum amount of \$100,000 per year. The request is the basis for the decision. EPA will not be bound by the decision. The authorization is a discretionary action by the Agency based on the basis of certain determinations.

EPA has determined based on its evaluation of relevant documents and the Settling Defendants' request for reimbursement, Section 300.52(d) of the NCP, that:

1. The release of potential release of hazardous substances is not a release under section 300.52 of the NCP.

2. The Settling Defendants have agreed to implement the clean-up activities selected by EPA to address the threat posed by the release at the Site.

3. The Settling Defendants have demonstrated and agreed to implement the clean-up activities selected by EPA to address the threat posed by the release at the Site.

4. The activities proposed by the Settling Defendants, when implemented, are consistent with the NCP and will result in a release consistent with the NCP and will result in a release consistent with the NCP.

5. The Settling Defendants have demonstrated evidence of the release at the Site.

6. EPA does not accept as fact all of the information contained in the Settling Defendants' request for reimbursement. The request demonstrates a knowledge of relevant information.

NCP provisions and EPA guidance for the conduct of a remedial action. The Consent Decree, the terms and conditions of this preauthorization and, in technical matters, the Scope of Work shall govern the conduct of response activities. In the event of any ambiguity or inconsistency between the Request for Preauthorization and this Preauthorization Decision Document with regard to claims against the Fund, the Preauthorization Decision Document and the Consent Decree shall govern. As stated above, in technical matters, the Scope of Work and the Work Plans developed under the Scope of Work, when developed by the Settling Defendants and approved by EPA, shall govern the conduct of response activities.

DECISION AND TERMS AND CONDITIONS

I preauthorize the Settling Defendants to submit a claim(s) against the Superfund for an amount not to exceed the lesser of six million nine hundred thousand dollars (\$6,900,000), or 30.14 percent of reasonable and necessary eligible costs, unless such amount is adjusted by EPA pursuant to paragraph 13 below, incurred for the detailed design, construction and operation of the source control remedy, and the design, construction, and operation of the groundwater treatment system for the remedy set forth in EPA's Record of Decision for the Re-Solve site (Exhibit 1 hereto) as specified in the Scope of Work (which is incorporated into the Consent Decree) and the Work Plans when approved by EPA, subject to the terms and conditions set forth below. In the event of any ambiguity or inconsistency between the terms and conditions and the discussion, the terms and conditions shall govern.

- 1) The Settling Defendants, as provided in the Scope of Work attached to the Consent Decree, shall develop and implement a worker health and safety plan. The Plan shall comply with OSHA Safety and Health Standards: Hazardous Waste Operations and Emergency Response (29 CFR Part 1910.120; 51 Federal Register 45654 et seq., December 19, 1986).

Discussion:

The Settling Defendants's Request for Preauthorization contained, as a part of the worker health and safety plan, an air monitoring plan. As specified in the Scope of Work, the Settling Defendants shall develop a worker health and safety plan, including a plan for air monitoring during air stripping, which will be reviewed by EPA. The health and safety plan when approved by EPA shall satisfy the requirements of OSHA Safety and Health Standards: Hazardous Waste Operations and Emergency Response (29 CFR Part 1910.120, 51 Federal Register 45654 et seq. (December 19, 1986)). The Settling Defendants will implement the plan as approved or subsequently revised, as provided in the Consent Decree and the Scope of Work.

- 2) The Settling Defendants shall develop a remedial design in accordance with the Scope of Work and EPA's Remedial Design and Remedial Action Guidance. The remedial design to be developed by the Settling Defendants as specified in the Scope of Work shall insure that all actions undertaken by the Settling Defendants shall be undertaken in accordance with the Clean-up and Performance Standards identified in Section VI. of the Consent Decree and in the Scope of Work. In accordance with Section V. of the Consent Decree, all activities undertaken by the Settling Defendants off-site shall in addition comply with all required permits, unless an exemption from the requirements of such permits is granted according to law.
- 3) Modification of remedial design elements or performance requirements contained in the Scope of Work or the remedial design report shall require approval by the Regional Administrator or his/her designee. Such modifications when approved in accordance with Agency procedures by the Regional Administrator shall modify this decision document.
- 4) The Settling Defendants shall, pursuant to Section V.D. of the Scope of Work, provide for long-term site management (i.e., operation and maintenance) of the Site sufficient to ensure the long-term effectiveness and permanence of the Remedial Action, and the continuing protection of human health and the environment. The costs of operation and maintenance, unlike the costs of operating the groundwater extraction, treatment, and reinjection system for up to ten years after the initial start-up period, is not eligible for reimbursement. The Work Plan when developed and approved will differentiate between operation and maintenance activities and pump and treatment activities.
- 5) The Settling Defendants shall develop and implement for remedial design and remedial action:
 - a) Procedures which provide adequate public notice of solicitations for offers or bids on contracts. Solicitations must include the evaluation methods and the criteria for contractor selection. Pursuant to Section VI. of the Consent Decree, EPA shall have the right to disapprove the selection of the architect or engineer and the construction firm(s) selected by the Settling Defendants. The reasons for any such disapproval shall be communicated to the Settling Defendants in writing.
 - b) Procedures for procurement transactions which provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price. The Settling Defendants and their contractors

shall use free and open competition for supplies, services and construction.

Discussion:

While the Settling Defendants are not required to comply with the Federal procurement requirements found at 40 CFR Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988), the Settling Defendants should be guided by these documents in the development of procurement procedures for small purchases (e.g., \$25,000 or less), formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to remedying the release at the Re-Solve Site. The Settling Defendants may utilize a prequalification list(s) of persons, firms or products under any of the procurement procedures and should look to 40 CFR Part 33.230(c) in implementing such procedures. The award of any fixed price contract by the Settling Defendants satisfies the requirement of open and free competition for any subcontracts awarded within the scope of the prime contract.

- c) Contracts for construction which include a Differing Site Conditions clause equivalent to that found at 40 CFR §33.1030(4).
- d) Procedures to settle and satisfactorily resolve, in accordance with sound business judgment and good administrative practice, all contractual and administrative issues arising out of preauthorized actions. The Settling Defendants shall issue invitations for bids or requests for proposals; select contractors; approve sub-contractors; manage contracts in a manner to minimize change orders and contractor claims; resolve protests, claims, and other procurement related disputes; and handle subcontracts to assure that work is performed in accordance with terms, conditions and specifications of contracts.
- e) A change order management policy and procedure generally in accordance with EPA's guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

Discussion:

The Settling Defendants Request for Preauthorization did not contain a change order management policy procedure in accordance with EPA's guidance. Therefore, the Settling Defendants should develop guidelines which for example define the authority of the project coordinator to approve changes within the scope of the contract which do not effect design requirements and are within certain dollar limits. Other change orders may require the approval of EPA and/or the Executive Director.

- f) Detailed quality assurance/quality control plans for remedial design activities (e.g., sampling, monitoring, etc.) and construction activities (e.g., sampling, operations, etc.) in accordance with Section IX. of the Consent Decree.
 - g) A financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete account of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.
- 6) Pursuant to Section XII. of the Consent Decree, the Settling Defendants shall notify EPA of the Project Coordinator who shall be responsible for overseeing and administering the cleanup (i.e., the project manager). As a term and condition of preauthorization EPA shall have the right to disapprove the project coordinator selected by the Settling Defendant. The reasons for any such disapproval shall be communicated to the Settling Defendants in writing. The Settling Defendants have submitted to EPA a sole source justification for the firm that shall supply the project coordinator. While EPA accepts this justification as the basis for procurement of the firm for oversight of cleanup activities, the burden shall rest with the Settling Defendants to establish as a part of their claim that the costs incurred are reasonable.

Discussion:

The Settling Defendants' Request for Preauthorization contained a justification for sole source procurement of the oversight firm. EPA accepts this justification based on public exigency of initiating activities in support of cleanup of the Re-Solve, Inc. Site.

- 7) In order to treat the contaminated soils located at the Site the Settling Defendants as a term and condition of preauthorization may utilize the competitive negotiation procurement method for detailed design, construction and operation of

the source control remedy. The Settling Defendants will issue a Request For Proposal (RFP) including the performance specifications and the evaluation criteria. The evaluation criteria will include price as a factor, generally weighted at 35 to 40 percent, as well as technical qualifications for the final selection. The scope of the contract for the source control remedy will include a pilot test and a full-scale pilot test of the soil dechlorination technology (i.e., detailed design), and full-scale implementation of soil dechlorination (i.e., construction and operation). The Settling Defendants will award either a cost reimbursement, a fixed price, or a combination of cost reimbursement and fixed price type of contract for detailed design, construction and operation. If the Soil Dechlorination Technology is not implementable, the contaminated soils and sediments will be treated on-site by soil incineration. Any decision to incinerate soils and sediments will not result in reconsideration of the maximum amount for which claims may be submitted by the Settling Defendants.

Discussion:

In order to initiate detailed design for the source control phase of the remedy, the Settling Defendants must develop the RFP. Preparation of the RFP is beyond the scope of preauthorization. Activities conducted by the Settling Defendants after the completion of the RFP, which may be defined as approval of the RFP by the Executive Committee, are within the scope of preauthorization and are eligible for reimbursement under the terms and conditions contained in this PDD. The Settling Defendants Request for Preauthorization proposes the use of a Request for Qualifications in advance of the issuance of the RFP. While this approach is acceptable, it requires more time than the approach outlined above which combines the technical qualification and cost proposal phases into one. In addition, the Request proposes the award of a fixed price contract. The Agency recommends that the Settling Defendants consider the award of a contract with fixed price (e.g., pilot test, mobilization, clearing and grubbing) and cost reimbursement (e.g., actual dechlorination) components. In that way, the Defendants will know the maximum cost for major elements of the cleanup and eliminate the tendency of contractors to build in contingencies as a result of uncertainties created by the use of innovative technology. In addition, good project management, coupled with performance evaluations, will likely result in increased efficiency and lower costs as the project progresses.

- 8) The Settling Defendants will enter into a contract with a qualified engineering firm to design the groundwater treatment system. Engineering services may be obtained through a competitively negotiated cost reimbursement type contract. The services to be performed by the engineering firm will include determining the feasibility of reinjection to flush the soils; performing a pump test/performance test; designing the groundwater extraction, treatment and reinjection facility; developing a procurement package complete with plans and specification for the construction and operation of the groundwater treatment facility. The responsibility of the design engineer shall be in accordance with the standard of care for the engineering profession in the Commonwealth of Massachusetts. The Invitation for Bid (IFB) developed by the engineering firm will be issued using the formal advertising (sealed bidding) method of procurement resulting in the award of a fixed price contract to the lowest responsive, responsible bidder for construction. This contract may provide for operation of the groundwater system or the Settling Defendants may separately procure for operation of the groundwater system.
- 9) The Settling Defendants shall provide EPA and its agents with site access as set forth in Section X. of the Consent Decree and shall immediately notify the Agency if they are unable to initiate or complete the preauthorized response action.
- 10) In submitting claims to the Superfund, the Executive Committee, on behalf of the Settling Defendants shall:
 - a) Document that response activities were preauthorized by EPA;
 - b) Substantiate all claimed costs through a financial management system as described in paragraph 5(g); and
 - c) Document that all claimed costs were eligible for reimbursement pursuant to this preauthorization and are reasonable and necessary in accordance with the appropriate Federal cost principles.

Discussion:

See paragraph 16 for additional references to the Federal cost principles.

- 11) The Settling Defendants shall maintain all cost documentation and any records relating to their claim for a period of not less than six years from the date on which the final claim has been submitted to the Superfund, and shall provide EPA with access to their records. At the end of the six-year period, the Settling Defendants shall notify EPA of the location of all records. The Settling Defendants shall allow EPA the opportunity to take possession of the records before they are destroyed; this requirement is in addition

The existing Defendant will enter into a contract with a
 civil engineering firm to design the ground water treat-
 ment system. Engineering services may be obtained through
 a competitively negotiated cost reimbursement type contract.
 The contract to be performed by the engineering firm will
 include determining the feasibility of remediation of the
 site, performing a pump and treat system design, designing
 the groundwater extraction, treatment and injection facility,
 developing a groundwater remediation package complete with plans and
 specifications for the construction and operation of the
 groundwater treatment facility. The responsibility of the
 design engineer shall be in accordance with the standard of
 care for the engineering profession as the Commission of
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The existing Defendant shall provide EPA and the State
 with access as set forth in Section X of the Contract. The
 contract shall be issued to the agency if they are unable
 to complete the project within the contract period.

The existing Defendant shall be responsible for the design of the
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to the record retention requirement located at Section XXVI of the Consent Decree.

- 12) Claims may be submitted against the Superfund by the Trustee only while the Settling Defendants are in compliance with the terms of the Consent Decree and no more frequently than intervals of:

- (a) EPA's approval of the Pre-Design Report;
- (b) EPA's approval of the Remedial Design, Site Preparation Mobilization and Completed Construction of the Soil Treatment Unit;
- (c) 25% Completion of Soil and Sediment Excavation and Treatment;
- (d) 50% Completion of Soil and Sediment Excavation and Treatment;
- (e) 75% Completion of Soil and Sediment Excavation and Treatment;
- (f) Completion of Soil and Sediment Treatment;
- (g) Completion of Surface Grading and Cover, and Regrading and Revegetating Wetlands;
- (h) Completion of Well Installation, Recharge System Installation, Groundwater Treatment Plant Construction;
- (i) Claims for Groundwater Treatment of \$250,000 or more; and
- (j) A Final Claim for the Balance of Eligible Costs at the End of Ten Years of Operation of the Groundwater Treatment Plant.

Discussion:

The Scope of Work and the Work Plans approved thereunder shall determine the order in which activities will be conducted under the Consent Decree.

- 13) If the the Settling Defendants find it necessary to seek to modify the actions that EPA preauthorized, the Settling Defendants may submit to EPA a revised application for preauthorization. In addition, the Settling Defendants may submit a revised application for preauthorization if prior to final entry of the Consent Decree any party which submitted a signed Consent Decree fails to make payments that are

required in order for that party to participate in the settlement. EPA will consider such an application for preauthorization in a timely manner and will, subject to the availability of appropriated funds, amend the maximum percentage and dollar amount for which the Settling Defendants may submit claims to the Fund. The maximum amount for which the Settling Defendants may submit claims will be determined according to the criteria used in approving the Settling Defendants' application for preauthorization and shall not exceed 40% of reasonable and necessary eligible costs to implement the the approved remedy.

- 14) Claims shall be submitted to the Director, Office of Emergency and Remedial Response, EPA, Washington, D.C. EPA shall provide the appropriate form(s) for such claims.
- 15) EPA will not furnish written approval of the Settling Defendants' procurement procedures; selected contractors, except as provided in paragraph 5)a) above; and the contracts entered into by the Settling Defendants. In addition, EPA shall not approve change orders submitted by the Settling Defendants' contractors.
- 16) EPA may adjust claims using the facilities and services of private insurance and claims adjusting organizations or Federal personnel. In making a determination whether costs are allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations - OMB Circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2). Where additional costs are incurred due to acts or omissions by the Settling Defendants, payment of the claim will be adjusted accordingly. EPA may require the Settling Defendants to submit any additional information needed to determine whether the actions taken were reasonable and necessary.
- 17) At least 60 days before filing a claim against the Fund for the remedial action, the Settling Defendants shall present in writing all claims to any person known to the Settling Defendants who may be liable under section 107 of CERCLA for response costs incurred in carrying out the Consent Decree. If the first claim was denied by the responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.
- 18) Payment of any claim shall be subject to the Settling Defendants subrogating to the United States the rights of the Settling Defendants as claimant to the extent to which their response costs are compensated from the Superfund. Further, the Settling Defendants and their contractors shall assist in any cost recovery action which may be initiated by the United

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States by furnishing on a reasonable basis the personnel services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the Settling Defendants or the Defendants at the Site; providing all requested assistance in the interpretation of evidence and costs and providing requested testimony. All of the Settling Defendants' contracts which implement preauthorized activities shall include a specific requirement that the contractors agree to provide this cost recovery assistance.

- 19) Eligible costs are those costs incurred, consistent with the NCP, in carrying out the remedial action, subject to following limitations:
- a) Costs may be reimbursed only if incurred after the date of this preauthorization;
 - b) Costs may be reimbursed only for detailed design, construction and operation of the source control remedy; design, construction, and operation of the groundwater treatment system; and project management for the Site provided herein. Such costs shall not include any of the oversight costs incurred by EPA or the Commonwealth of Massachusetts, costs that were incurred by EPA or Commonwealth prior to the effective date of the Consent Decree.
 - c) Costs incurred for long-term operation and maintenance as described in paragraph 4, are not eligible for reimbursement from the Superfund.
 - d) Costs incurred by the Settling Defendants for the payment of the Executive Director and for administering the Remedial Site Trust Fund are not eligible for reimbursement from the Superfund.
 - e) Costs incurred for the payment of a person who is listed in the List of Parties Excluded From Federal Procurement or Non-Procurement, established pursuant to Executive Order 12549, May 26, 1988, at the time the contract is awarded shall not be eligible for reimbursement unless the Settling Defendants obtain approval from EPA pursuant to 40 CFR Part 32 prior to incurring the obligation.
 - f) Costs incurred for the payment of contractor claims either through settlement of such claims or an award by a third party may be reimbursed from the Fund to the extent EPA determines that:
 - (i) the contractor claim arose from work within the scope of the contract at issue and the contract was for activities which were preauthorized;

- (ii) the contractor claim is meritorious,
- (iii) the contractor claim was not caused by the mismanagement of the Settling Defendants;
- (iv) the contractor claim was not caused by the Settling Defendants' vicarious liability for the improper actions of others;
- (v) the claimed amount is reasonable and necessary;
- (vi) the claim for such costs is filed by the Settling Defendants within 5 years of completion of the preauthorized activities; and
- (vii) payment of such a claim will not result in total payments from the Fund in excess of the amount preauthorized.

Discussion:

"Contractor claim" means the disputed portion of a written demand or written assertion by any contractor who has contracted with the Settling Defendants pursuant to the Consent Decree to perform the remedial action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the Settling Defendants and which is subsequently settled by the Settling Defendants or an award by a Third Party through the Disputes Clause of the contract document.

- g) An award by a third party on a contractor claim should include:
 - (i) findings of fact;
 - (ii) conclusions of law;
 - (iii) allocation of responsibility for each issue;
 - (iv) basis for the amount of award; and
 - (v) the rationale for the decision.
- h) Interest accrues on amounts due the Settling Defendants pursuant to this agreement where EPA fails to pay the amount within sixty (60) days of EPA's receipt of a completed claim from the Settling Defendants. A completed claim is a demand for a sum certain which includes all documentation required to substantiate the appropriateness

of the amounts claimed. Where the Settling Defendants submit a claim which is technically complete but for which EPA requires additional information in order to evaluate the amount claimed, interest will not accrue on the claim until sixty (60) days after EPA's receipt of the requested additional information. The rate of interest paid on a claim is the rate of interest on investments of the Superfund established by subchapter A of chapter 98 of the Internal Revenue Code of 1954.

- i) For a period not to exceed 10 years from completion of construction of the groundwater pump and treatment system, costs incurred for restoration of groundwater shall be eligible for recovery until EPA determines that the Clean-up and Performance Standards for the groundwater as specified in Section VI. of the Consent Decree have been achieved. The period of construction shall include a reasonable start-up period not to exceed one year.
- 20) This Preauthorization Decision Document is intended to benefit only the Settling Defendants and EPA. It extends no benefit to or creates no right in any third party.
- 21) If any material statement or representation made in the application for preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Settling Defendants. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XXI. of the Consent Decree. Criminal and other penalties may apply (see Exhibit 3).
- 22) The Superfund is not hereby obligated to reimburse the Settling Defendants for subsequent remedial actions not covered by this preauthorization caused by failure of the original remedy if those actions are necessary as a result of the failure of the Settling Defendants, their employees or agents, or any third party having a contractual relationship with the Settling Defendants to properly perform activities under the Work Plan and any modification thereto approved by EPA and in conformance with the terms and conditions of this preauthorization decision document. The foregoing shall not apply if the remedy fails for any other reason. EPA may require the Settling Defendants to submit any additional information needed to determine whether the actions taken were in conformance with the Work Plan and were reasonable and necessary.

- 23) This preauthorization shall be effective as of the date of entry of the Consent Decree by the Court.


Henry L. Longest II

Director, Office of
Emergency and Remedial Response

3/2/89
Date

EXHIBITS

1. EPA Record of Decision for the Re-Solve, Inc. Site
2. Consent Decree
3. Civil and Criminal Penalties

EXHIBIT 3

CERCLA PENALTY FOR PRESENTING FRAUDULENT CLAIM

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1).)

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States for a civil penalty of \$2,000, and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, and costs of the civil action. (31 USC 3729 and 3730.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM
OR MAKING FALSE STATEMENTS

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

Any person who knowingly gives or causes to be given false information as a part of a claim against the Federal Government, and who, upon conviction, is fined in accordance with the applicable provisions of title 18 of the United States Code, shall be imprisoned for not more than 5 years for each such offense, or in the case of a second or subsequent conviction, or both (18 USC 359 (b)(1)).

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant is liable to the United States for a civil penalty of \$1,000, and an amount equal to two times the amount of damages sustained by the Government because of the claim, the person, and costs of the civil action. (18 USC 359 (b)(2)).

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM
OR MAKING FALSE STATEMENT

The claimant will be charged a maximum fine of \$10,000 or 5 years of imprisonment, or both, for each offense. (18 USC 359 (b)(3)).